

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Rejection Under 35 USC §112

The Examiner has rejected claims 21 and 22, and alleges that the same are indefinite for failing to particularly point out the distinctly claimed subject matter which Applicants regard as the invention.

The Examiner mentions and believes that claims 21 and 22 are indefinite since it is not clear what is meant by the aroma compound additive being carried. Applicants wish to point out that claims 21 and 22 as presented are clear and consistent with 35 USC §112, Second Paragraph. This is true because as set forth in the specification, aroma compounds are carried by carrier compounds and then mixed with or sprayed onto the infusible or water soluble material, or both (Please see page 1 of the Specification). Moreover, the combined composition of aroma compound and carrier compound is identified as an aromatizing composition which may be subjected to infusions with solvent, like water, to yield a more desirable tasting beverage. Thus, the aroma compounds that are carried and sprayed onto or mixed with the infusible or water soluble material become part of the beverage product which is made by using a solvent like water.

In view of the above, it is clear from the specification as to what is meant by carried aroma compounds. In view of this, Applicants respectfully request that the rejection made under 35 USC §112, second paragraph be withdrawn and rendered moot.

II. Rejection Under 35 USC §102

The Examiner has rejected claims 1-3, 10-12, 21 and 22 under 35 USC §102(b) as being anticipated by EP 560 609 (hereinafter, '609). In the rejection, the Examiner mentions, in summary, that the claims are rejected for the reasons already set forth in the last Office Action and that the '609 reference discloses the use of soluble coffee powder carrying aroma additive. In this regard, the Examiner believes that two grams of soluble coffee containing the aroma additive would be required to make a conventional brewed beverage as called out in the instant claims. In view of this, the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as previously presented, is directed to a beverage precursor comprising infusible or water soluble material and aroma compound additive wherein the amount of infusible or water soluble material present is at a reduced level when compared to conventional product. The beverage composition made from the same, and as defined in independent claim 10, is superior in that when reduced levels of infusible or water soluble material are present in combination with aroma compound additive, the beverage is preferred by consumers when compared to conventional beverages made from infusible or water-soluble material at typical levels and in the absence of aroma compound additive.

Independent claim 1 is further defined by the dependent claims which claim, among other things, specific amounts of infusible or water soluble material present within the

beverage precursor. Independent claim 10 is directed to a beverage composition made from the precursor of claim 1. Independent claim 10 is further defined by the dependent claims which claim, among other things, specific amounts of infusible or water soluble materials employed. Previously filed claims 21 and 22 further define the aroma compound additive as one that is carried, e.g., by a component like a carbohydrate or volatile organic carrier as well as the other illustrated examples presented in the specification as originally filed.

In contrast, and as already made of record, the '609 reference is merely directed to a product associated with coffee. There is no teaching whatsoever in the '609 reference that even remotely suggests that less than conventional amounts of infusible or water soluble materials selected may be used in combination with aroma compound additive that is carried to make a superior precursor or beverage as claimed in the present inventions. The '609 reference is merely directed to a coffee flavor and coffee aroma source of micromilled coffee that can be used in coffee flavored food products like ice cream, candy, chewing gum and fillings. No teaching whatsoever in the '609 reference, again, even remotely describes all of the important and critical limitations set forth in the presently claimed inventions as now presented. Therefore, Applicants request that the novelty rejection be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner has rejected claims 1-18, 21 and 22 under 35 USC §103 as being unpatentable over DE 19919711 (hereinafter, '711). In the rejection, the Examiner mentions, in summary, that the rejection stands for the reasons set forth in the last Office Action. Furthermore, the Examiner mentions that the '711 reference discloses the carrying of coffee and aroma additive in packaging. The Examiner admits that the

'711 reference does not disclose particular amounts of infusible water soluble material but believes that such limitations would have been obvious to one of ordinary skill in the art. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as now presented, is directed to a beverage precursor comprising:

- a) an infusible or water soluble material selected from the group consisting of tea leaf, ground coffee, coffee or tea particulates, cocoa, herbs and a mixture thereof; and
- b) aroma compound additive

wherein the infusible or water soluble material is present at a level that is from about 0.5 to about 25.0% by weight less than a conventional amount used for about a six to about eight ounce serving and the aroma compound is an additive and not originating from the infusible or water soluble material present, the conventional amount being defined as 1.90-2.50 grams for tea leaf, 3.5-6.5 grams for ground coffee, 1.4-2.4 grams for coffee particulates, 0.30-0.90 grams for tea particulates, 1.0-2.5 grams for herb and 1.85-4.5 grams for cocoa.

Independent claim 1 is further defined by the dependent claims, which claim, among other things, the amount of water soluble material present, that the infusible material is tea leaf, that the tea leaf is decaffeinated tea leaf, the source of the aroma compound, and how the beverage precursor may be packed.

Independent claim 10 is directed to a beverage made with the beverage precursor described in independent claim 1. Independent claim 10 is further defined by dependent claims which claim, among other things, the amount of water soluble material present, the type of infusible material, the source of aroma compound, and how the beverage precursor may be packed. Again, and as already made of record, previously presented claims 21 and 22 define the aroma compound as an additive which is carried.

In contrast, the '711 abstract, again, merely describes aromatization of tea and coffee with aromas. The abstract further states that the invention makes it possible for the consumer to add aroma to basic tea or coffee. Unlike the present invention, beverage precursor is prepared and ready for the consumer to use wherein the consumer needs no additional steps to prepare the desired beverage. Moreover there is no teaching whatsoever in the '711 reference that even remotely suggests that a reduced level of infusible or water soluble material may be used in combination with aroma compound additive in order to result in a superior precursor or resulting beverage composition. Clearly, no teaching whatsoever in the '711 reference even remotely defines what constitutes less than a conventional amount of infusible or water soluble material as set forth in the invention as now presented. In view of this, all of the important and critical limitations set forth in the presently claimed inventions are not found in the '711 reference. Therefore, Applicants request that the obviousness rejection based on the same be withdrawn and rendered moot.

IV. Rejection Under 35 USC §103

The Examiner has rejected claims 1-3, 10-12, 21 and 22 under 35 USC §103 as being unpatentable over EP 560609 (hereinafter, '609), Stoeckli et al., U.S. Patent No. 4,496,596 (hereinafter, '596), EP 011324 (hereinafter, '324), EP 001460, or Soughan, U.S. Patent No. 5,932,260 (hereinafter, '260). In the rejection, the Examiner maintains the previous rejection and believes, in summary, that the references disclose a mixture comprising coffee with an aroma additive where the additive is carried on coffee itself. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as presented, is directed to the beverage precursor comprising infusible or water soluble material and aroma compound additive wherein the amount of infusible or water soluble material present is at a reduced level when compared to conventional product. The beverage composition made from the same, as defined in independent claim 10, is superior in that when reduced levels of infusible or water soluble material are present in combination with aroma compound additive, the beverage is preferred by consumers when compared to conventional beverages made from infusible or water soluble material at typical levels and in the absence of aroma compound additive.

Independent claim 1 is further defined by the dependent claims which claim, among other things, specific amounts of infusible or water soluble material present within the beverage precursor. Independent claim 10 is further defined by the dependent claims

which claim, among other things, specific amounts of infusible or water soluble material when compared to the conventional amount used to make a particular beverage composition.

Furthermore, independent claims 1 and 10 are further defined by previously presented claims 21 and 22 such that the aroma compound additive is one which is subjected to a carrier and carried.

In contrast, the '609, '596, '324, '460, and '260 references are merely directed to products associated with coffee. There is no teaching whatsoever in the references relied on by the Examiner that even remotely suggests that less than conventional amounts of infusible or water soluble materials selected may be used in combination with aroma compound additive to make a superior precursor or beverage as claimed herein. In view of this, all of the important and critical limitations set forth in the presently claimed invention are not found in the references relied on by the Examiner, in any combination. Therefore, the obviousness rejection relying on the same should be withdrawn and rendered moot.

V. Rejection Under 35 USC §103

The Examiner has rejected claims 1-18, 21 and 22 under 35 USC §103 as being anticipated by Johnson et al., U.S. Patent No. 4,076,847 (hereinafter, '847). In the rejection, the Examiner mentions, in summary, that the claims are rejected for the reasons of record and that the '847 reference discloses coffee solid carrying aroma additive. In view of this, the Examiner continues to believe that the rejection made with respect to the '847 reference is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage precursor that comprises insoluble or water soluble material an aroma compound additive wherein the infusible or water soluble material is present at a level that is less than a conventional amount. Moreover, Applicants have claimed a superior beverage composition made from the precursor of claim 1 wherein beverage composition is made with less infusible or water soluble material yet in combination with aroma compound additive. The resulting beverage composition is preferred by consumers when compared to conventional beverage products made with the standard level of infusible or water soluble material.

In contrast, the '847 reference, again, merely describes beverage compositions that have flavor granules coated on the outer surface with a powdered beverage such as tea, cocoa or coffee. Such granules are preferably prepared by coating the flavor granules in a rotating granulator. Nowhere in the '847 reference is it even remotely taught or suggested to make a beverage precursor or a beverage composition with less infusible or water soluble material than conventional products and in combination with an aroma compound additive. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not, even remotely found in the '847 reference. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants, again, submit that all claims of record are now in condition for allowance.
Reconsideration and favorable action are earnestly solicited.

Applicants further submit this application is ready for Appeal.

In the event the Examiner has any questions concerning the present patent application,
he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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